MINUTES OF THE

GREENSBORO BOARD OF ADJUSTMENT

REGULAR MEETING

AUGUST 23, 2004

The regular meeting of the Greensboro Board of Adjustment was held on Monday, August 23, 2004 in the City Council Chamber of the Melvin Municipal Office Building, City of Greensboro, North Carolina, commencing at 2:06 p.m. The following members were present: Chair Donnie Sparrow, Joyce Lewis, Marshall Tuck, Chris Conrad and Hugh Holston. Bill Ruska, Zoning Administrator, and Blair Carr, Esq., from the City Attorney's Office were also present.

Chair Sparrow called the meeting to order, and explained the policies and procedures of the Board of Adjustment. He also explained the procedure for appealing any ruling made by the Board.

ADJUSTMENTS TO AGENDA

Mr. Ruska stated that BOA-04-26, 821 Rankin Place, would have to be continued to the September 27th meeting because there were actually two encroachments involved. Only one was advertised in the legal notice.

Mr. Tuck moved that BOA-04-26, 821 Rankin Place, be continued to the September meeting, seconded by Ms. Lewis. The Board voted 5-0 in favor of the motion. (Ayes: Sparrow, Tuck, Lewis, Conrad, Holston. Nays: None.)

APPROVAL OF MINUTES OF LAST MEETING

Mr. Tuck moved approval of the minutes of the July 25, 2004 meeting as written, seconded by Mr. Conrad. The Board voted 5-0 in favor of the motion. (Ayes: Sparrow, Tuck, Lewis, Conrad, Holston. Nays: None.)

Mr. Ruska was sworn in for all testimony given before the Board today.

II. OLD BUSINESS

APPEAL OF SIGN ORDINANCE INTERPRETATION

A) BOA-04-21: 1717 BATTLEGROUND AVENUE - KATIE CASHION APPEALS AN INTERPRETATION OF THE ZONING ADMINISTRATOR REGARDING A NONCONFORMING BILLBOARD SIGN WHICH EXTENDS ABOVE THE ROOFLINE OF A STRUCTURE. THIS CASE WAS CONTINUED FROM THE

JULY 28, 2004 MEETING. PRESENT ZONING-GB, BS-10, CROSS STREET-PEMBROKE ROAD. (APPEAL DENIED)

Counsel Carr said she would like to raise one procedural or jurisdictional issue in this matter. The Board had before it a request by the applicant for an interpretation for part of the City's Unified Development Code. It was the City Attorney's position that the applicant was placed on notice of this interpretation as early as April of 2002 and as late as May of 2002. Mr. Ruska had made the interpretation that was being placed on her particular signs. That being the case, this would be an untimely appeal as it was outside the 15 day appeal period.

Counsel Carr said the applicant was represented by Attorney Isaacson. To the extent the Board would like to hear from Attorney Isaacson, she thought that would be appropriate for the Board. There had been several discussions between Attorney Isaacson and the City's Legal Department.

Marc Isaacson, Esq., 101 West Friendly Avenue, represented Katie Cashion, the owner of the property involved. He said he would let Ms. Cashion explain to the Board why she felt that she was entitled to bring this matter up at this time. Ms. Cashion was notified by the City in early 2002 about a problem or issue that came up when an application for a sign permit was made. An independent sign contractor was involved and he applied to replace a sign for one of the occupants on this large tract under discussion on Battleground Avenue. The subject tract of property had three separate buildings on it. The southernmost building now housed a Nationwide Insurance Agent and it was the replacement of that sign that triggered the issue before the Board today. He would fast forward for a moment. In April 2002, Ms. Cashion met with Terry Wood of the City Attorney's Office and signed a letter in which she agreed to remove the rooftop sign that was on one of the buildings on this large tract of property. She believed at the time that she was under the legal requirement to do so. He submitted that she was under the mistaken impression that she had to remove that rooftop sign.

Ms. Cashion had now reviewed the facts and had asked him to do so also. They were here to ask the Board to interpret the City's interpretation of this ordinance and determine whether that was accurate and correct. They believed that it was not. If it were not, then the Board would be in a position to rule on the matter. If the City's interpretation were correct, then Ms. Cashion would be left with the decision of the Board.

When the City sent a letter and said it was now time to take the rooftop sign down, Ms. Cashion met again with Counsel Wood at the City Attorney's Office, who advised that she could, at least, make application to the Board to bring this matter before the Board for this interpretation. The matter had been continued on for some time, but they believed

if the interpretation was accurate and correct by the City staff, then that would be fine. If it were accurate and correct on her behalf, then that was what they would like to present to the Board.

Counsel Carr said the Board at this point was looking at the jurisdictional issue, rather than the factual issue. The City Attorney's Office would limit it to that scope because obviously Mr. Ruska had not given the Board the facts of the City's position with regard to the substantive matter of the case.

Katie Cashion, 103 West Greenway Drive North, was sworn in.

Chair Sparrow asked Ms. Cashion to explain for the Board what happened in 2002 and what she believed she was told in 2002. Then she should explain why she elected to file this request for an interpretation when she filed it. He asked that her testimony be limited to that; what Mr. Woods told her in 2002 and what she came away from those conversations understanding.

Ms. Cashion said she thought there was more to the issue than that and she hoped the Board would allow her to give some of the background leading up to that 2002 meeting, which was very important.

Chair Sparrow said the Board would hear it unless it became irrelevant.

Ms. Cashion said the Board's information did not show 1713 Battleground Avenue where the cottage was located that started this process. In October 2001 her tenant, The Pink Bow, was able to get property three doors down so they gave her notice and she re-leased that property to Nationwide for their Greensboro Office. They ordered a nice freestanding sign to go in the front of their building. They moved in on November 1, 2001 and up fitted the space to suit their needs. On November 5, 2001, five days later, they came to her saying that the sign company had told them that the City would not issue a permit for their sign because there had to be 100 feet between their sign at 1713 and the next-door sign, the Christmas Shop, at 1715. She called the City and a Zoning Enforcement Officer came out and measured the distance between the two signs. The space was 3½ feet short of 100 foot requirement. She called the City and asked to whom she could appeal. She was advised no one, that the ruling could not be appealed. She asked if this could be put off until after the Christmas season was over and Planning/Zoning said no again. Her other option was to set aside that property, but the City said no again because she did not have enough front footage at 1713. About 10 days later, she had the Christmas Shop sign moved 3½ feet north. She asked the sign company to appeal to the City to wait until after Christmas. They came back and told her that had been agreed to. On December 1, 2001 the City issued the permit for those two signs.

Four months later, on April 15, 2002, the City sent a letter to Nationwide, with a copy to the Christmas Shop and a copy to her, basically canceling all signs on the property because they stated the application had been falsified. It did not disclose the rooftop sign on the property. When she recently looked back at the application, there was a space on there where the applicant was to indicate other signs on the property. There were no other signs at 1713. The rooftop sign was up the street at 1719 Battleground, three buildings away. She did not think there was any intent to falsify the application. There were no other signs at 1713 Battleground Avenue. The City did not call her as the property owner to see if they could work it out; the City notified the tenants. She received a letter from the Christmas Shop, a tenant for 12 years, stating that if they could not have their sign, they would move out. She contacted her City Council representative and a meeting was scheduled with City Attorneys Miles and Wood. In the meantime, she had found that she could appeal and she had filed an appeal of the decision. In the discussion with City Attorney Miles and Deputy City Attorney Wood, they offered a two year leeway, which would be until the end of June 2004. She felt that was the best she could do and she was grateful for the help. She had felt that the leeway would give her an opportunity to review the ordinance, get some advice and perhaps seek legal counsel on the matter. When she read the entire regulation, she found it very confusing. In one place, they specifically exempted rooftop signs with no later reference as to how rooftop signs were to be handled. The rooftop sign at 1719 Battleground Avenue had been there more than 50 years and it had always been considered grandfathered. Cashion's had been there over 50 years and she had been there as an owner 34 years. Never had there been one complaint about that billboard. There was now the same number of signs on this property that had been there many years. They had two freestanding signs and one rooftop sign. If she left the rooftop sign, she jeopardized her ability to rent her other property, the freestanding buildings at 1713 and 1715. If she took the sign down, she would have to forego a part of her fixed income. She felt the problem arose when the City refused to recognize the grandfather status of the rooftop sign.

Counsel Carr said she would have to object. She said the Board was here to decide whether Ms. Cashion was placed on notice in 2002 of the interpretation made by Mr. Ruska. Therefore, it was her request to have this interpretation appeal go forward, timely or not.

Chair Sparrow asked the Board if it wanted to hear additional testimony from Ms. Cashion or whether the members had heard enough or had any questions.

Ms. Lewis asked Ms. Cashion if she were told that she could not appeal in the beginning.

Ms. Cashion said in the beginning when she called City Zoning and Planning, the answer was their word emphatically was law and she could not appeal then. She did not try for an appeal until after the April letter.

Mr. Ruska explained that there was an appeal process if a person did not agree with staff's interpretation of the ordinance. However, there was no variance process, if what she was seeking was a variance to the spacing of the signs. The ordinance specifically said that the Board of Adjustment had no authority to grant a variance to spacing or number of signs on a property. He said as to the appeal process, he did not know what Ms. Cashion was referring to because she did not have that conversation with him. There was an appeal process if you disagreed with the interpretation of the ordinance. The appeal process was what was before the Board today and what she filed in 2002.

Mr. Tuck asked if Ms. Cashion did not agree with this Board's interpretation, could she go to Superior Court.

Counsel Carr said that if the Board believed that the staff's interpretation of the type of sign that staff had labeled was correct, certainly any applicant could appeal the Board's interpretation of the Code. But if an applicant came in and wanted to put signs closer than allowed by the ordinance, there was no vested power in the Board of Adjustment to allow such a variance or adjustment. If an applicant were allowed two signs on a parcel and they wanted to erect a third, there was no variance to allow for that. With regard to the signs, there was what Mr. Ruska just said, an appeals process as to the Board's interpretation and application of the ordinance as to that factual situation. She believed Mr. Ruska and Ms. Cashion had said that there was, in fact, an appeal filed between April and May 2002 and it was withdrawn. At that point in time, the appeal was timely.

Mr. Tuck said he would like to hear from Counsel Wood. If the first appeal was done on time and the two year letter or stay, if you will, ran out, then this appeal would be timely on that.

Counsel Carr said there was a question as to whether that was a stay or not. She certainly would have Mr. Wood testify and give the Board the agreement that was struck between the City and Ms. Cashion. The date of the letter was May 14, 2002. The Board members had that letter in front of them.

Ms. Lewis asked if this were property owned by different individuals, would the overhead sign be an issue?

Mr. Ruska said if they were different lots, different zone lots, she was correct, but this was all one zone lot. All those businesses were on one lot and all that signage on that lot counted towards the total of signage that could be there. On the other hand, if there were a non-conforming sign on that zone lot, then that was part of the total sign package as well.

Ms. Lewis said that if the insurance company had not wanted to put up a sign, there would be no issue.

Mr. Ruska said that was correct. It was entirely triggered by the Nationwide sign. He further said it related to the City's ordinance and how you treated non-conforming signs. Of course, the philosophy on non-conforming signs was that they were supposed to go out of existence eventually. One of the ways that they go out of existence was if an application were made for a new or replacement signage on the property that had a non-conforming sign on it, that non-conforming sign either had to be brought into compliance with the ordinance or removed. In this particular instance, there was no way to bring the billboard into compliance with the ordinance; therefore, it had to be removed.

Terry Wood, Deputy City Attorney with the City of Greensboro, was sworn in. He said in the spring of 2002, the Legal Department was informed that this issue had arisen. Actually, the rooftop sign he thought was more appropriately called an off site advertising sign or a billboard sign. When he went by there this morning, Cricket advertising was on it. This sign did not advertise businesses on the premises. In the spring of 2002, Legal was informed that this particular piece of property had this billboard on it. Billboard, outdoor advertising and rooftop signs were prohibited, so the rooftop sign on this property was non-conforming. It was allowed to remain in a non-conforming status. When the sign was erected for the Nationwide business, the ordinance said that then all signs on the property would have to be brought into conformity. The nonconforming sign could be left there, but if another sign were added, then all signs had to be made to conform. So in Legal's opinion, this rooftop sign/outdoor advertising sign was at this point in violation of two parts of the ordinance. He said they met with Ms. Cashion and she explained her situation much as she had explained it to the Board today. They felt that the way the permit was requested by the sign company was not entirely her fault or her responsibility. They felt that the sign company had not told the City everything and they should have told the City everything they could about the other signs on that property. By the same token, there was an ordinance to enforce and they could not allow what they considered at that time a violation of the ordinance to exist. They met with Ms. Cashion. They felt that there were some equities on her behalf. They explained to her that the rooftop sign would have to come down. She said she had a lease that ran for two more years and it would expire on June 30, 2004 and she would like to keep it that long. Legal said okay. They put that in writing. They said this was the agreement. The other sign at Nationwide was brought into compliance and he was sure that was an expense to her. She got the spacing properly on that. Legal thought this June the sign would come down. It did not and now it was before this Board.

Ms. Cashion said apparently there was a misunderstanding about the outdoor sign lease being two years further. She had not had the lease with her and she didn't know how much longer the lease extended. She said there was nothing in the letter that prohibited her from coming back to the City for further consideration. When she had the discussion with Attorney Wood, she thought he understood her position and at that point he said yes, that she could go forward for an appeal here. This was timely; it was before the June 30th date. She said her rooftop sign had been grandfathered for many years and she thought grandfathering was grandfathering. She thought the falsification issue was not

relevant because nobody intentionally falsified anything and there was no other sign at 1713. Had she been filing for the permit herself, she would not have said there was another sign because she did not realize she would be penalized because she owned the whole piece of property.

Mr. Isaacson said he thought the issue here was that Ms. Cashion felt at the time based on the explanation that was given to her that she had no choice but to take down the rooftop sign. He said they were prepared to submit to the Board a copy of the ordinance and their interpretation of it so that the Board could decide whether that was correct or not. He saw no harm in allowing that to proceed. Ms. Cashion was under the impression given to her by several people at the City that she had no choice but to take that sign down. The two arguments they wanted to submit to the Board for consideration were: 1) Whether in fact this was a non-conforming sign; 2) Was this the property on which the on premise application for a permit was made and triggered the requirement to remove the rooftop sign?

Chair Sparrow said the Board would proceed to see whether the Board had the power and ability to hear this matter further or whether it was time barred.

Mr. Conrad said based on the letter of May 14, 2002 and the fact that the Attorney's Office continued this, he thought it would be reasonable for Ms. Cashion to assume that she could appeal this at a later date.

Mr. Conrad then moved that the Board hear the case for Ms. Cashion, seconded by Ms. Lewis. The Board voted 3-2 in favor of the motion. (Ayes: Conrad, Lewis, Holston. Nay: Sparrow, Tuck.)

Counsel Carr said this was a procedural matter, a majority would rule regarding that issue.

Mr. Ruska said that Katie S. Cashion was the owner of the property located at 1713-1721 Battleground Avenue. The lot was located on the western side of Battleground Avenue, east of Westover Terrace, and south of Pembroke Road on zoning map block sheet 10. The property had been zoned GB since July 1, 1992. Prior to that it was zoned Industrial L. The applicant was requesting an interpretation concerning a nonconforming billboard sign that extends above the roofline of a building. The applicant was requesting to be allowed to keep the sign based on their interpretation of Ordinance Section 30-5-5.11(A)(2). The definition of an *outdoor advertising sign (billboard)* was: Any sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing elsewhere than upon the same zone lot where such sign is displayed. In lieu of a commercial message, any otherwise lawful noncommercial message may be displayed. Section 30-5-5.6(L) states: “Nonconforming outdoor advertising signs may be continued in accordance with the provisions of Section 30-5-5.11 (Nonconforming signs and sign permits).” The outdoor advertising (billboard) - rooftop sign had been on the property for

many years. The sign became nonconforming on July 1, 1992 due to the citywide rezoning effective date of the Unified Development Ordinance. The sign was nonconforming because it functioned as an outdoor advertising sign, which was a prohibited sign in the GB zoning district. Rooftop signs were also prohibited signs in any zoning district. A portion of Section 30-5-5.2 titled **Prohibited Signs** stated: Unless otherwise permitted under this Article, the following signs are prohibited in all zoning districts: (H): Signs which extend vertically above the highest portion of the roof of any structure. Section 30-5-5.11(A)(1) stated: "A sign that is prohibited, with the exception of a roof sign, or is allowed without a permit by this Section, and was legally in existence on the effective date of this Ordinance (July 1, 1992) shall either be removed or brought into compliance with this Section within twelve (12) months of the effective date of this article." Even by excepting the roof sign, the billboard sign is still prohibited, since the property is zoned GB. The next Section which was Section 30-5-5.11(A) (2) stated: "A sign that would be allowed by this Section only with a sign permit, and was legally in existence on the effective date of this Ordinance (July 1, 1992), and was constructed in accordance with the applicable laws and ordinances in effect on the date of construction, but by reason of its size, height, location, design, or construction was not in compliance with the requirements of this Section, shall be deemed a nonconforming sign." This same Section 30-5-5.11(b) stated: "Any nonconforming sign shall be brought into compliance with this Section or removed if one of the following occurs: (v) "If an application for a sign permit is made to add new or additional signage to a property containing a nonconforming sign." This Section of the Sign Ordinance was adopted by Council and became effective on April 18, 2000. The property contained three buildings and multiple (approximately five) businesses. The property was allowed to have two freestanding identification signs along the Battleground Avenue frontage, provided the signs maintained a minimum of 100 feet of separation between them. On December 11, 2001, a sign contractor, Chuck Bell with Sign-A-Rama, applied for and was issued a sign permit for a second freestanding identification sign for Nationwide Insurance, a new tenant on the property. At the same time, the sign contractor was issued a permit to relocate an existing freestanding sign (which identified the Christmas Shop) so that the signs would meet the 100-foot separation requirement. There was an area on the sign permit that required the contractor/owner to list other existing signs. The sign contractor failed to disclose the fact that there was a billboard on the property, and the zoning officer was not aware of a billboard on this property. On April 15, 2002 the owner received a Notice of Violation and a letter revoking the two sign permits. The revocation letter and the Notice of Violation were issued because the non-conforming billboard/rooftop sign was not included as an existing sign on the proposed sign permits, and after installation of the new freestanding sign, the Christmas Shop sign did not meet the 100-foot separation from the Nationwide sign. Upon receipt of the Notice of Violation on April 15, 2002, the applicant filed an appeal of the decision of the Zoning Officer to be heard by the Board of Adjustment at their May 28, 2002 meeting. In May of 2002, Ms. Cashion met with City staff and agreed to relocate the freestanding signs so they would meet the 100-foot separation requirement. The Christmas Shop sign was shifted and a new sign permit was issued to allow them to correct that violation. This permit was issued on May 16, 2002;

thus, the separation violation was corrected. At the same time, Ms. Cashion agreed to remove the nonconforming billboard/rooftop sign. A signed agreement allowed her an extended two years to remove the billboard/rooftop sign. That two-year period was agreed upon because that was when her billboard lease would expire. The letter of agreement, dated May 14, 2002, was signed by A. Terry Woods, Chief Deputy City Attorney, and the landowner, Ms. Katie S. Cashion. Each Board member had a copy of this letter in their case packet. On May 15, 2002, based on the above letter of agreement, the appeal case was withdrawn from the agenda by request of Ms. Cashion and she received a refund of her BOA filing fee. Counsel Wood was still present and would answer any questions. Mr. Ruska also handed up two photographs taken recently showing the property, the zone lot and the three signs, the Nationwide sign, Carol's Pool Shop, which during Christmas time becomes the Christmas Shop, and the non-conforming billboard that was also a rooftop sign.

Attorney Isaacson said he also had two photographs of the area in question. On the pictures, he had noted the various property addresses. Something that was important to the Board members was to note the various property addresses here.

Ms. Lewis asked if there were different property owners of the property in question, even though they were all zoned GB, would the staff have attempted to have the billboard removed when Nationwide applied for its sign. If she were the owner of Nationwide's building and the Christmas Shop building, would she have had to have the signs redone because of the space between? Then if Ms. Cashion owned the building with the billboard, also zoned GB, would that have caused Ms. Cashion to have to remove the billboard?

Mr. Ruska said again if those had been three separate zone lots, then that would not be an issue. The fact that the property was under one ownership and it was considered one zone lot by the ordinance meant that the signage requirements applied to the whole zone lot.

Counsel Carr said the answer to Ms. Lewis' question was: If it were different ownership, Ms. Lewis was correct; it would not apply.

Mr. Ruska added that if there were different ownership, there would have to be three separate lots there and that situation did not exist.

Attorney Isaacson said he had one more handout, which was a copy of the pertinent sections of the ordinance regarding sign regulations for the City. He said this Section 30-5-5.11(A(b) dealt with the bringing into compliance or removal of any non-conforming signs. He noted that he had added the margin comments just to direct the Board members' attention more efficiently. Under Section (b) it said: Any non-conforming sign shall be brought into compliance with this section or removed if one of the following occurs. He asked that Items (i) through (iv) be skipped to the last page of the handout

and go to Item (v) which said: If an application for a sign permit is made to add new or additional signage to a property containing a non-conforming sign, and he thought that was the issue here. He could not find a definition for the word "property" under the ordinance. Mr. Ruska continued to refer to a "zone lot," which was Planning staff lingo or verbiage. They were accustomed to referring to that zone lot, but that was not what the ordinance referred to. The ordinance specifically called it "a property." He then referred the Board back to the pictures he submitted, which showed the distinct different addresses of the businesses on this tract of land. Now if the City Council had wanted to say "zone lot," if they had wanted to say "tract," if they wanted to say "lot" or they had wanted to say "plot" or something of that nature, a more technical term, they could have. But they did not. They said "a property." He submitted that the reason they did that was so that there could be some flexibility under the ordinance in the interpretation of it.

Attorney Isaacson said he would ask the Board to consider that this was a fairly small tract with three separate buildings on it and five distinct separate addresses on it. If this were applied to a 30 acre shopping center or a 30 acre tract of property where there were various businesses, various signs, how would that be interpreted? In other words, there had to be some flexibility under this section of the ordinance to allow it to live and to breathe and to exist. Just because you applied for a sign for one area of a tract of land where a business might be located, if it were on such a big tract of land, then it would make no sense to bring all the signs into conformity with all the matrix of ordinances that applied to signs in the City now just because a sign had to be on the far side of that tract of land that had bearing, no relationship to this particular sign. He said he thought the ordinance was written this way for a purpose. Again if the City Council had meant to say a "zone lot," which was defined, or a lot or a "tract" or a "plat," something of that nature, he thought they would have. They said if an application for a sign permit were made to add additional signage to a property containing a non-conforming sign, then all the signs on that property must be brought into compliance. He thought that made sense because when the sign contractor came down to apply for a sign permit to replace the tenant that had moved out, he applied for 1713 Battleground Avenue for the Nationwide Agency. He doubted that the sign contractor checked all the details of the title to the property or anything of that nature to determine if 1713, 1715, 1719, 1721 were all owned by the same person or were they all same of the same tract of land, because that had no bearing on his responsibility to erect a sign for the Nationwide Agency right there at 1713. And still further, when they came back and said, "You are too close to the Pool Shop sign at 1715 Battleground," that was further confusing because there were two separate buildings on one narrow, triangular shaped tract of land there. Again it was confusing because those two signs were 2½ to 3 feet too close to each other for spacing as required under the ordinance. So that sign had to be relocated at Ms. Cashion's expense. Only then, a few months later, when an Inspector was looking at the property was there some notice that, "Oh, by the way, you have a rooftop sign at 1719. On a separate building, you have a rooftop sign that was now non-conforming or now needs to be brought into compliance or removed because you applied for a sign for the Nationwide Agency three buildings away."

Attorney Isaacson said he would ask the Board in its interpretation to focus on the ordinance and the way that ordinance was written. He said he disliked getting hyper-technical with the Board, but the City was certainly being hyper-technical interpreting it this way, and that was the reason Ms. Cashion was suitably confused at the time when the letter was signed. When this was brought to her attention, she certainly felt that she had no choice at the time. But a careful reading of the ordinance he thought revealed some legislative intent to deal and be flexible with unique and different situations. Not all land was cookie cutter lots in the City of Greensboro. The ordinance had to be flexible. The Board's responsibility, he submitted, was to apply the ordinance and interpret the ordinance in a way that just made common sense.

Lastly, Attorney Isaacson submitted that the Board needed to look at the circumstances involved. There were different addresses. Mail was delivered at different addresses here. So that was the way the public, the U.S. Mail, and others had dealt with this tract of land, dividing it up into what they considered to be different properties. He submitted that that was a common sense way to interpret the ordinance and that was the reason that they were here.

Attorney Isaacson said they had another argument about the interpretation of the ordinance. However, he would ask the Board to focus on this issue about the lack of definition of the word "property" in the ordinance and the common sense meaning the Board ought to apply.

Mr. Ruska said that if any one of these addresses were to be sold by Ms. Cashion, they would have to be legally separated before sale. However the lots probably could not be separated because you could not make a minimum lot size out of several of those properties that would meet the ordinance.

In rebuttal to Mr. Isaacson's presentation, Mr. Ruska said in regard to the contractor not knowing who owned the properties at 1713, 1715, etc., on the same day that the contractor signed an application for 1713, which was 12/11/01, for the Nationwide sign, he also made a sign permit application for 1715 Battleground Avenue, listing a freestanding sign that had to be relocated. So obviously at that point the contractor knew that those properties were linked together. In regard to the interpretation of the word "property," it would not make any sense for a sign regulation to consider each one of those a property on which you would allow, for example, a freestanding sign. One of the purposes of sign regulations was to avoid sign clutter and that was why signs were restricted to a zone lot and the number of signs was strictly prescribed by the ordinance. The sign table referred to the number of signs per lot and, in fact, there was a footnote to the freestanding sign table that says you could have more than one freestanding sign. He then read the footnote: "The additional signs shall not be located closer than 100 feet to any other freestanding sign on the same zone lot."

Ms. Lewis said, from a personal perspective and as a citizen, she owned three contiguous lots and she considered them separate identities, even though there was one owner for all three. So she just did not understand the distinction that was being applied here and felt it was discriminatory.

Counsel Carr said it went back to the question that Mr. Conrad asked, and it was an issue they had talked about before when they were talking about single family residences for purposes of bringing lots into conformity to the 1992 regulations. Parcels that were contiguous with the same owner began being treated as one lot to alleviate the non-conformities. But as Mr. Conrad said, would they have to be subdivided to be sold, yes, but it would be selling a non-conforming lot. If you owned four lots in a row and all of them were conforming as to the ordinances, they would be treated individually. But because these lots, as they stand, were all non-conforming, they were being put together in a zone lot capacity.

Mr. Tuck commented that it seemed there had been some acknowledgment that it was the same zone lot or property because all the signs had to come within the same ordinance, as far as the square footage of the advertising. And whether it was the Nationwide or the Pool and Christmas Shop or whatever else was on there, they were all bound by the regulation that only allowed so many square feet of graphics. If they were truly treated as individual lots, then each one could have their own square footage of graphics on there.

Mr. Tuck said he had a question on Point No. 9 of Mr. Ruska's statement of facts. If they could not have applied for a new sign permit, would that rooftop sign have to come down in July of 1993? It said: On the effective date of the ordinance, July 1, 1992, they shall either be removed or brought into compliance with this section within 12 months of the effective date of this article.

Mr. Ruska said under that first Section, no; the rooftop sign portion of it would not have to have been removed. But really what governed this particular instance was Point No. 10 and the Section that talked about a sign that would be allowed by this Section only with a sign permit and was legally in existence on the effective date of the ordinance shall be deemed a non-conforming sign. That was reinforced by Section 30-5-5.6(L), which was Point No. 6, and that came from the billboard section of the ordinance that talked about non-conforming outdoor advertising signs may be continued in accordance with the provisions of Section 30-5-5.11, Nonconforming Signs. That then brought you down to Section 10. So the sign was deemed to be non-conforming and what triggered it was that sign permit for the new Nationwide sign. If that application had not been made, that billboard would not be an issue today.

Chair Sparrow said before the Board was an issue that the Board had now said that the request for interpretation was timely filed; therefore, the issue was whether or not the interpretation of the City was correct and that this was a roof sign that was a non-

conforming use and should have been removed in accordance with agreement on June 30, 2004.

Counsel Carr said she thought the question was a little more now and that was: Was that a rooftop/billboard sign as interpreted by the Zoning Enforcement Officer?

Chair Sparrow asked if the other Board members understood the issue to be that: Was this a rooftop/billboard sign? Was that the issue?

Counsel Carr said she thought they needed to look back at Ms. Cashion's interpretation and she thought that was what was being requested.

Chair Sparrow said they should look at the application because that was what the Board was bound by and was what she had asked for. He said her application was for an interpretation, but it did not say an interpretation of what.

Mr. Ruska referred the Board to the middle paragraph of the June 30th letter. "It appears to me that the description of a non-conforming sign under that Section does not apply to my situation because one could not obtain a sign permit for a rooftop sign under the current ordinance."

Mr. Tuck said it seemed to him that in the first sentence, she was requesting this interpretation because "it was my understanding at the time the letter was entered into that I had no choice but to remove the rooftop sign on the building."

Mr. Ruska said he thought what the Board needed to understand was that: 1) it was a billboard and that automatically made it a non-conforming sign; but furthermore, 2) compounding that was that it was a rooftop sign, which was prohibited. But in July 1992, the rooftop sign was set aside from all those other signs that had to be removed within a year. Those other types of signs that had to be removed within a year under that section really were like portable signs and signs of that nature where removal of the sign was not a big deal, especially in an economic sense. But what it did do, it referred it to paragraph No. 10, which automatically gave it a non-conforming sign status and then that, in turn, was regulated by the section on non-conforming signs that said: “when new or additional signage was applied for, non-conforming signs had to be brought into compliance with the ordinance or removed."

Chair Sparrow said the interpretation of the City staff was that this was a billboard from 1992 on. So the issue before the Board was did the Board find it to be a billboard or a rooftop sign?

Counsel Carr said it could be both and staff found it to be both and had labeled it both consistently. She also said staff could be right in either case or in both cases or wrong in either case or both cases.

Ms. Lewis said, on a point of clarification, she didn't understand that Ms. Cashion was asking for an interpretation of whether it was a rooftop sign or not. She thought Ms. Cashion was asking for an interpretation of whether it had to be removed because of the other sign.

Chair Sparrow said the logic tree was, that if it were a non-conforming rooftop or billboard sign and an application was filed for a change in signage of any type on that property, that that instant made it removable; that the sign had to be taken down whether it was either of those at that time.

Chairman Sparrow said what the Board should focus on was whether it was either a billboard or a rooftop sign and it could be either. The question of whether or not, by the application of the new signage on the property, it immediately became subject to being removed.

Mr. Conrad said he agreed and believed that based on the submissions by Mr. Isaacson and Ms. Cashion that they contend that there are three types of signs, conforming, non-conforming and everything else; that was the interpretation he got from the first document submitted. He asked if that truly were what was in contention here because he didn't hear any testimony from Mr. Isaacson or Ms. Cashion on that point.

Chair Sparrow said he thought Mr. Conrad was saying: Did their testimony mean that somehow this one particular sign was cut out from the herd or whether the rules applied to it.

Mr. Conrad said it appeared to him that that was Ms. Cashion's interpretation and that was what the Board would be voting on.

Mr. Holston said in the case of BOA-04-21, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the interpretation of the City be upheld, thereby denying the appeal, seconded by Mr. Conrad. The Board voted 4-1 in favor of the motion. (Ayes: Sparrow, Conrad, Tuck, Holston. Nays: Lewis.)

NEW BUSINESS

VARIANCE

A) BOA-04-22: 1305 EAST CONE BOULEVARD - FLOYD BROOKS REQUESTS A VARIANCE FROM THE SIDE STREET SETBACK REQUIREMENT. *VIOLATION*: A PROPOSED DETACHED CARPORT WILL ENCROACH 10 FEET INTO A REQUIRED 15-FOOT SIDE STREET SETBACK. TABLE 30-4-6-1 & SECTION 30-4-8.2, PRESENT ZONING-RS-9, BS-54, CROSS STREET-GLENROY DRIVE. (DENIED)

Mr. Ruska stated that Floyd Brooks was the owner of a parcel located at 1305 East Cone Boulevard. The lot was located at the northeast intersection of East Cone Boulevard and Glenroy Drive on zoning map block sheet 54. The applicant was requesting a variance for a detached accessory carport to encroach 10 feet into a 15-foot side street setback. The carport was proposed to be 18 feet wide by 20 feet deep. The lot was a corner lot and was rectangular in shape. The lot area consisted of approximately 10,900 square feet. The lot contained a single-family dwelling and a detached storage building. The applicant had stated there was an existing concrete pad already in place. The carport would be located at the end of the existing driveway. In his application, the applicant had made mention that the existing contour and drainage of the property was already established and that there were two significant trees that could be impacted if the carport were located further eastward on the property. The lot was currently zoned RS-9. The adjacent properties located to the north and east were also zoned RS-9, the property located on the western side of Glenroy Drive was zoned RM-18, and the properties located on the southern side of East Cone Boulevard were zoned CD-LI.

Floyd Brooks, 1305 East Cone Boulevard, was sworn in. He handed up to the Board pictures for its consideration. When he purchased the property in May, it had a rusted-out utility building on it that was an eyesore. He removed the utility building and extended the concrete pad six inches and widened it seven inches in order to accommodate a carport. He got a permit to put a utility building there and asked about a permit to pour the cement and put up a carport. He was told he didn't have to have a permit to pour cement, so he thought he was in good shape. When he went to get the permit for the carport, he found that because his property was a corner lot, he had a 15 foot property line setback instead of a five foot property line. He could meet the 35 feet from Glenroy over to the carport, but he needed 10 more feet in order to erect the carport. Therefore, he was requesting a 10 foot variance for the carport. Going up Glenroy, his property adjoins the property of the Palmer House Apartments. If the carport is allowed, it would not encroach on anyone's property or hurt anybody in any way, but it would be an asset to him to protect his automobiles.

Chair Sparrow asked Mr. Brooks if there were other homes around in his area that had carports situated similar to his. Would the location of this carport make this property stand out from other properties with regard to a carport?

Mr. Brooks said he did not think it would make his property stand out because his neighbor's property had utility buildings on it. He had talked to the neighbors beside and behind him and they had no problems with the proposed structure.

Mr. Tuck said the site plan showed there were contour slopes and existing drainage in place, which he could not see from the pictures. He asked what kind of topographic and drainage problems he would have were he to move that over.

Mr. Brooks said the property sloped to the east and it had a natural drain down to Cone Boulevard. If you added more cement, that would create more runoff than there was at this time.

Mr. Tuck said in BOA-04-22, 1305 East Cone Boulevard, he would incorporate the Zoning Administrator's statement of findings of fact, and based on those findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied, seconded by Mr. Conrad. The Board voted 3-2 in favor of the motion. (Ayes: Sparrow, Conrad, Tuck. Nays: Lewis, Holston.)

(B) BOA-04-23: 720 COLERIDGE DRIVE - BENJAMIN AND PAMELA HOXWORTH REQUEST A VARIANCE FROM THE SIDE SETBACK REQUIREMENT. *VIOLATION:* A PROPOSED DETACHED GARAGE WILL ENCROACH 2 FEET INTO A REQUIRED 5-FOOT SETBACK. SECTION 30-4-8.2, PRESENT ZONING-RS-12, BS-79, CROSS STREET-WESTMINSTER DRIVE. (DENIED)

Mr. Ruska said that Benjamin & Pamela Hoxworth were the owners of the property located at 720 Coleridge Drive. The lot was located on the eastern side of Coleridge Drive north of West Friendly Avenue on zoning map block sheet 79. The property was zoned RS-12. The applicant was proposing to construct a detached garage that would encroach 2 feet into a 5 foot minimum side setback. The lot contained a single-family dwelling with an established driveway. The applicant was proposing to locate the garage in line with the existing driveway. The proposed garage dimensions would be 24 feet by 24 feet for a total of 576 square feet. The garage would be one-story in height. In his application, the applicant had mentioned an existing tree that could be impacted if he shifted the building to meet the setback. The adjacent properties were also zoned RS-12.
Benjamin Hoxworth, 720 Coleridge Drive, was sworn in. He said the main issue was a large, approximately 100 foot Oak Tree that was the centerpiece of the back yard. If the garage were located five feet from the edge, it would be approximately four feet from the base of the tree, which would be directly over some of the main roots of the tree. He handed up information for the Board's consideration. He explained the documents in the handout. One item was a letter from the neighbor whose property adjoined the property line, attesting that they had no objection to the variance.

Mr. Conrad said according to Zoning Ordinance 30-4-7.4: No structure shall encroach more than three feet from the property line. His question was: Were they talking about the sidewall and also talking about the eaves and the roof that world extend beyond the wall?

Mr. Ruska said Mr. Conrad was talking about a specialized section of the ordinance that dealt with roof overhang and eaves, and that did not apply to this situation. This was a detached building.

In response to questions from the Board, Mr. Hoxworth said the proposed garage would be approximately 24 feet. He said the tree service told him that if the garage were moved over two feet, there would be about a 90 percent chance that the tree would survive. He further explained that in the pictures of other carports on either side of him, they were three feet from the sideline. He said one alternative would be to build a smaller garage, but they thought this was pretty much minimum for their needs. He said the front edge of the garage was what would abut the tree, so he didn't believe the garage could be pulled forward enough because then it would probably be the backside edge impacting the tree. He said the tree was healthy and provided a lot of shade and attractiveness to the yard, so it would a detriment to the yard and the neighborhood as well to remove the tree. He further explained that if they pulled the carport up to within five feet to the corner of the house, his thought was that they would not be able to bring it up far enough to miss the tree. It might be off the back of the edge a few feet, but you would still be putting the foundation down close to the base of the tree. Also the driveway would have to be widened slightly to the left to access garage. It was not wide enough in that area, if you pulled it forward, to go into the garage.

Mr. Ruska explained that since the structure was less than 600 square feet, the separation between garage and house would be five feet.

Mr. Tuck said in BOA-04-23, 720 Coleridge Drive, based on the Zoning Administrator's findings of facts and incorporating those, he moved the Zoning Enforcement Officer be overruled and the variance granted based on the fact that there was a 100 year old Oak Tree that seemed to be in the way of all different configurations of this garage and that the hardship was not a result of the applicant's own actions and the variance was in harmony with the general purpose and intent of the ordinance and preserved its spirit, and the granting ensured public safety and welfare because there were no public safety issues at hand, seconded by Ms. Lewis. The Commission voted 3-2 in favor of the motion. (Ayes: Lewis, Tuck, Holston. Nays: Sparrow, Conrad.)

Chair Sparrow said the Board would take a five minute break.

(C) BOA-04-24: 511 MAYFLOWER DRIVE - AMY TEDDER REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. *VIOLATION:* AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE MORTON STREET RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING-RM-18, BS-8, CROSS STREET-MORTON STREET. (GRANTED)

Mr. Ruska said Amy Tedder was the owner of the lot located at 511 Mayflower Drive. The lot was located at the northeast intersection of Mayflower Drive and Morton Street on zoning map block sheet 8. The lot contained a single-family dwelling. The applicant had replaced a privacy fence that exceeded the maximum height of 4 feet by 2 feet within 15

feet of the Morton Street right-of-way. The property owner was issued a Notice of Violation on June 30, 2004. Upon receipt of the Notice of Violation, the applicant immediately contacted the zoning office and began her variance procedures. The lot was a corner lot. The applicant had stated that residents use the lot as a cut across when walking and that a variance was needed to provide adequate privacy. In reference to Section 30-4-9.6(E)1) Measurements: " Fence height shall be measured at the highest point, not including columns or posts, of the fence section as measured from the grade on the side nearest the abutting property or street." The nearest portion of the fence was 11.6 feet from the property line adjacent to the Morton Street right-of-way. This side property line was approximately 117 feet in length. The applicant was proposing to keep the fence at least 60 feet from the intersection. There was no problem with visibility or sight distance interference. The lot was currently zoned RM-18. The adjacent properties were also zoned RM-18.

David Tedder, 1209 Carriage House Drive, Colfax, NC, was previously sworn in and said that he and his wife owned the subject property. He passed up letters and pictures for the Board's consideration. They tried to repair a fence that was located on the property, but found that impossible since it had been there for over 20 years. They constructed a new privacy fence where the old fence was. They were unaware that there would be an ordinance issue involved. The property was a corner lot about a block from UNCG. Morton Street was a very narrow street and parking was allowed on one side of it, but there was no sidewalk. Students parking on Mayflower would cut across their property to Morton Street. If cars were coming down Morton Street at the same time, the students would actually come up into their yard until the cars had passed. One of the pictures presented showed a path worn in the yard by the students cutting through the yard. A six foot fence would prevent them from looking into the house or into the patio area. A four foot fence would not allow any privacy at all on that side of the house. He further said the hardship would be both the privacy issue and the foot traffic.

Jerry Cunningham, 601 Mayflower Drive, previously sworn in, said he had lived in his home since 1983 and the old fence had been there the entire time he had lived there. Mr. Tedder had come in and redone what the neighborhood had considered a "crack house" for years. He had done this wonderful thing for the neighborhood and basically he put back a fence that was already there. He said because he lived on the other side of the street, they got the foot traffic all hours of the night and looking into windows was no problem at all. He was present to represent the neighborhood and say they were definitely for this variance. Mr. Tedder's daughter would be living there and it was good to have an owner occupied house in the neighborhood.

There was on one to speak in opposition.

Ms. Lewis said in BOA-04-24, 511 Mayflower Drive, based on the Zoning Administrator's findings of facts, which were incorporated herein, she moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: the

practical difficulties or unnecessary hardships if the fence were cut down was that the applicant would not be able to make reasonable use of his property because of a lack of privacy because of the nearness to the road and that persons were continuously moving through that area, both day and night, according to information given at this hearing; the hardship results from the unique circumstances in that this house was located exactly where it was and as close to the road as it was; the hardship was not the result of the applicant's own actions because he had just recently bought the house and started making improvements to it and he replaced a fence that was already there and it was the same height as the one he had replaced; the variance would be in harmony with the general purpose and intent of this ordinance and preserve its spirit because it enhanced the neighborhood and made it safer for persons living in that house, and the granting of the variance assured the public safety and welfare and did substantial justice because it did not create any problem with visibility or sight distance interference; seconded by Mr. Holston. The Board voted 5-0 in favor of the motion. (Ayes: Sparrow, Lewis, Conrad, Tuck, Holston. Nays: None.)

(D) BOA-04-25: 1100 LOGAN STREET - PATTY ALVARADO REQUESTS A VARIANCE FROM THE SIDE STREET SETBACK REQUIREMENT. *VIOLATION*: AN EXISTING ROOM ADDITION ENCROACHES 10.2 FEET INTO A REQUIRED 15-FOOT SIDE STREET SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-7, BS-5, CROSS STREET-DOUGLAS STREET. (DENIED)

Mr. Ruska said that Patty Alvarado was the owner of a parcel located at 1100 Logan Street. The lot was located at the southwestern intersection of Logan Street and Douglas Street on zoning map block sheet 5 and was zoned RS-7. The applicant was requesting a variance for an existing room addition to encroach 10.2 feet into a 15-foot side street setback along the Douglas Street frontage. The applicant was issued a building permit in March 2004 to repair a side porch. The building inspector went by on March 15, 2004 and rejected the inspection. His note stated: “No one home, no inspection made, new room added with footing and addition not inspected. Zoning is checking on status.” The zoning officer, Barry Levine, made a site inspection and informed the owner that she needed to comply with the Ordinance or obtain a variance. In late May, the applicant came into the zoning office, but did not have the variance forms ready to file. On June, 1, 2004, she was issued a Notice of Violation for violating a dimensional Ordinance requirement. On July 8, 2004 the applicant was issued a civil penalty for failure to comply with the Ordinance. Several days later, the applicant visited the zoning office for additional information relating to the variance forms. On July 30, 2004, the applicant filed the variance request. Tax records indicated the house was constructed in 1948. The lot was a corner lot and was nonconforming in lot width. The approximate lot width was 64.40 feet and the current minimum required lot width for RS-7 was 70 feet. The applicant could not use the prevailing setback requirements along this block of Douglas Street. The property did not meet the minimum requirements that would allow a prevailing setback instead of a required setback. Also, the formula from Table 30-4-6-1, Footnote 3 was

applied and did not allow any reduction from the 15 foot minimum side street setback. The adjacent property located to the west was zoned RM-18 and the other adjacent properties were zoned RS-7.

Patty Alvarado, 1100 Logan Street, was sworn in. She said the wood porch on the Douglas side of the house was rotting and it had to be replaced. She inquired about a whether a permit was needed for replacing the rotten porch, which was a safety hazard. She was told she did not need one if she were not changing the dimensions of the house or the outside structure. She measured the porch as best she could, purchased the materials and had a handyman come out and assist in removing the old porch and putting the porch back together as it was. In the interim, she found out that she had violated several ordinances. She was present because she needed permission for the enclosed porch to stay. The survey showed how far into the setback her property was. She said the property line went through her living room, dining room and kitchen as well. She said the permit was not for a new room, but to remove all the rotted wood that was there and replace it. She still had part of the inside wall to repair, but she stopped her work because she was issued a citation. She also said the porch in question was on the Douglas side of the house. She said if you were standing on Logan Street, this was on the back right-hand corner of the house. She said there were three walls to repair. The enclosed in porch had no AC, but did have heat from the kitchen that shared a door with the porch. The porch was completely enclosed at one time.

Hazel O'Connell, 1100 Logan Street, was sworn in. She said the point she wanted to make was that the porch was already there, and like everything else that they had started on for that house, as far as repair work, etc., it blossomed from a simple small job into much more than what they had thought it was going to be. They thought they would just have to replace a few of the boards and some of the inside wall. Once they got in there, it was wet and rotted and it became much more than what they first intended. The house had been grandfathered at one time into compliance and they didn't realize that the building department was going to construe what they did as new construction; they thought it was repairing what was already there.

Barry Levine, City of Greensboro Zoning Enforcement Officer, said he received a call from Dave Amos, Building Inspector, that the City had received a call for an inspection. They noticed there was new construction on the house that had been completed. A large pile of wood was near the Douglas Street side when he was there. It appeared to be the remnants of a stoop, such as a three post stoop with some steps going down, and he thought that was what had been taken out. He contacted Transportation and Engineering and found the right-of-way, found what the violation was and issued the Violation Notice.

When questioned about the previous structure, Mr. Levine said it looked as if there had been an old stoop there, like a landing, where you would come out on it from the side of the house and go down. He handed up a color photograph, which he said might be clearer than the black and white photo. Mr. Levine said the foundation was cinder block

and looked well constructed at a glance. The cinder blocks were new. The siding, window and shingles also appeared to be new. He said the Building Inspector had told him that he thought, because of the remnants of wood, the previous structure had been a stoop. He was not disputing Ms. Alvarado's word that all four sides were enclosed. But just from the pile of wood there, it looked to him that it had been a stoop, but he could be wrong.

Ms. Alvarado said there was no siding on the closed in area. The exterior was wood. There were some cinder blocks there when she started the renovation. However, there was a lot of moisture damage and she replaced some of the cinder blocks. Some of the old blocks she used on the portion that faced her back yard. The cinder block portion of the new structure was higher than the old structure. She took the entire old structure down. There was no heating unit in the old structure. The door opened into the kitchen and the heat came from the kitchen into the structure. The old roof was flat and deteriorating at some corners. She replaced it with a type of shed roof. The old structure was not a breezeway. The new structure was not heated; it too gets its heat from the door into the kitchen. She kept dog food, a freezer and excess pots and pans in the new area.

Ms. Alvarado had a question about the height of a fence on her property, but Chair Sparrow told her she would have to see the Planning Department about that. He said that this Board could only look at what was contained in her application.

Ms. Alvarado said the door was a solid door made of metal. It matched the front door. It had a regular door lock on it, but she had a deadbolt lock installed. There was a wooden door with a regular door lock between the kitchen and this structure. Now the exit door to the outside has a deadbolt and she removed the lock from the other door. The door to the outside was the same door that had been there before. There were steps from the structure to the outside and there was a door between the kitchen and the added structure. The previous structure had a window, but it was broken. She had the handyman put a piece of plywood on it.

Mr. Tuck asked Mr. Levine if there were a possibility that there was some miscommunication between Ms. Alvarado when she went to apply for the permit and what she repaired. Does the structure look like it had gotten any bigger? Could it have been enclosed and the City did not know about it?

Mr. Levine said anything was possible. He said he would not like to venture a guess at that. He didn't know what it looked like before. What had made him decide there was a violation was the amount of debris at the curb and what the Building Inspector had told him. The total amount of debris would indicate that most of whatever was there was removed and the Building Inspector thought the same thing. He said Ms. Alvarado did not leave enough of the structure up to retain the non-conformity, in his opinion, so he issued the notice.

Mr. Ruska said the problem was that when Ms. Alvarado applied for the building permit to

do repairs, they didn't ask for a site plan. If she had applied for a room addition, they would have had a site plan; it would have accompanied the building permit and would have been routed for Zoning to check the setbacks. He said the building permit said, "Repairs to side porch." They didn't ask for a site diagram in that instance. He said they would have to also look at the amount of money that was on the building permit as the cost of the repairs and that was $1,000.

Ms. Alvarado said she bought the cheapest wood she could find and hired the cheapest labor she could find to give her a hand and show her how to do things. She did a lot of the work herself on the inside of the deck.

There was no one to speak in opposition.

Ms. Lewis said that in BOA-03-25, based on the stated findings of fact, which were included in the record by reference, she moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: The practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance were that this applicant replaced a structure that was already there and the unique circumstances were that again replacing a building that was there was not an addition to the building and the hardship was not the result of the applicant's own actions because there was a room already there, which the applicant replaced, and the variance was in harmony with the general purpose and intent of this ordinance and preserved its spirit because it improved the neighborhood and the safety for the resident living there and the granting of the variance assured the public safety and welfare and did substantial justice again because it enhanced the neighborhood and did not create any safety problems for anyone else in the neighborhood; seconded by Mr. Holston. The Board voted 3-2 in denial of the motion. (Ayes: Lewis, Conrad, Holston. Nays: Sparrow, Tuck.)

SPECIAL EXCEPTION

(A) BOA-04-26: 821 RANKIN PLACE - JULIE DAVENPORT REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B)2) TO ALLOW A PROPOSED ATTACHED ADDITION TO ENCROACH INTO A SIDE SETBACK. THE ADDITION WILL ENCROACH 2 FEET INTO A REQUIRED 5-FOOT SIDE SETBACK THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. PRESENT ZONING-RS-5, BS-8, CROSS STREET-TATE STREET. (CONTINUED)

This item was continued at the beginning of the meeting.

Chair Sparrow said there were two cases on the agenda for 3600 South Holden Road. He

asked Mr. Ruska if the two could be combined, or would they need to be heard separately.

Mr. Ruska said that they could be combined. There might be some specifics that would have to accompany the second case, depending on how the first case was concluded.

APPEAL OF NOTICE OF VIOLATION

A) BOA-04-27: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE DISPLAY OF MODULAR HOMES WHICH ENCROACH INTO THE REQUIRED STREET SETBACKS. SECTION 30-8-3.2, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (APPEAL UPHELD)

Jim Slaughter, Esq. 103 West Cornwallis Drive, was sworn in and stated that he represented Southern Showcase Homes d/b/a Homes America. He said he would mix law and facts and Mr. Burns was present to correct him on anything about which he might make misstatements. He would also combine the two items because he thought it made easier to consider them as a package. He said there were two items for Homes America, one was an appeal and one was a variance request.

Mr. Ruska said that Southern Showcase Housing, Inc. d/b/a Homes America appealed a Notice of Violation in reference to the display of modular homes that encroached into the required street setbacks. The property was located at the southeastern intersection of South Holden Road and McCuiston Road on zoning map sheet 154, and was zoned LI. The applicant recently located modular units adjacent or within the South Holden Road right-of-way. This portion of South Holden Road had a special setback for all districts, which was one hundred (100) feet from the centerline. Engineering and Department of Transportation (GDOT) records indicated the centerline of South Holden Road for the portion adjacent to this property was primarily 60 feet, while the southern portion of this property ranges from 62 feet to 65 feet from the centerline. If the centerline were measured at sixty (60) feet, the minimum property line setback adjacent to this portion of South Holden Road would be forty (40) feet. The centerline portion that was 65 feet and would create a 35 foot setback from the property line. Each BOA member had a project drawing attached to the fact sheet that showed the relationship of the property line to the centerline along the South Holden Road right-of-way. The applicant was issued a Notice of Violation for violating the dimensional setback requirement from the centerline of South Holden Road. The applicant was instructed to locate the modular unit in a location on the site that meets the minimum setback requirements. The property was used for display and sales of manufactured and modular homes. The Zoning Office contacted other jurisdictions in relation to their ordinance requirements for modular display homes. The City of Raleigh, Winston-Salem and Durham all required modular display units to meet their minimum required setbacks. Charlotte had an ordinance requirement that modular

display units must meet a minimum 20-foot setback from property lines along

thoroughfares. The Zoning Office contacted the North Carolina Department of Insurance for some clarification on modular versus manufactured homes in relation to display sales lots. The DOI ruling was based on Appendix G from the NC Regulations for Manufactured Homes, 2004 Edition. Appendix G, item **G2 Homes for storage states**: "When NEW or USED manufactured homes are being STORED at the dealer lot or other locations for a period of time exceeding 30 days from delivery, the homes are to be temporarily supported/blocked when required by the manufacturer and in accordance with the manufacturer's instructions." *Manufactured* homes have always been allowed to encroach into the setbacks because the manufactured (mobile) homes were on wheels and could easily be transported or moved in a manner similar to a motor vehicle. As long as the unit is on wheels, staff had made the interpretation that it was not a structure for setback purposes. *Modular* display homes (whether temporary or permanent) were not as mobile and even though DOI did not require blocking or tie downs, Appendix G was used for reasonable rationale and guidelines.

Mr. Ruska asked Mr. Levine to come forward because he had some photographs that would clearly demonstrate what was involved.

Barry Levine was previously sworn in. He handed up to the Board photographs for consideration. He then described what each photograph depicted.

Attorney Slaughter again said he represented Southern Showcase Homes, Inc., which in the Board's paperwork was shown as Homes America. He had two agenda items today, the first being an appeal from a violation and the second being a variance request. They were connected. His client leased space at 3600 Holden Road. They received a Notice of Violation on July 15th. He pointed out that what his client did on that property was what they had been doing for 12 years. Nothing as to where the mobile and modular homes were located had occurred within the last four years. The line was the same. What had changed was they received a Notice of Violation. He pointed out that never before Mr. Levine just spoke had they ever heard anything about being in anybody's right-of-way. He hoped the Board members would look in the file and see that that was not in the Notice of Violation, it was not something they had been told and there was no letter to them. He was dumbfounded to hear that they might be in the right-of-way, but he didn't believe that was the issue before this Board today because they never heard that before. He had not seen the photographs that Mr. Levine presented with a drawing of something that appeared to be a right-of-way until they were handed to him as this hearing started. He said his clients were not being told to move back mobile homes; they were only being told to move back modular homes. Those were two different types of structures. Because that appeared to him to be an incorrect decision, he decided to take two approaches: 1) he thought the decision was incorrect so he appealed it and 2) he asked for a variance because he thought was the simplest solution to the issue.

In appealing, he said these were not units in which people lived. These were "for sale."

They had been brought in on a trailer with wheels underneath and the wheels stay there. The units were not tied down and would not be. They were not on a permanent foundation and would not be. They were on a frame on a trailer. Like an automobile or RV, there are wheels underneath these structures. They had wheels, they had axles underneath and there was no, and could not be, a Certificate of Occupancy (CO) because there was no water, no sewer, no plumbing and the units were not hooked up to AC in the way that you have do to in order to have people live there. He too handed up photographs to the Board for consideration and explained what was purported to be shown in each. He said each Board member should have a complete set of Exhibits 2 through 8. Mr. Slaughter said both mobile and modular homes had wheels and axles under them. He then explained what was shown by each photograph.

Attorney Slaughter said there is a difference between mobile homes and modular homes, according to State standards. A mobile home was sometimes referred to as a manufactured home, which was also sometimes referred to as a HUD home, which meant it was manufactured according to the specifics of HUD and it could only be sold as a HUD home. A modular home was different altogether only in the sense that it was governed by State Statutes rather than by the HUD Statutes. Both were brought in on wheels and both left on wheels.

Attorney Slaughter said these mobile homes did not look like his father's mobile home. As a matter of fact, someone usually had to tell him whether the unit was one or the other because it was built according to the State Statute or according to the HUD Statute. If it made any big difference, usually the mobile/manufactured HUD homes were sometimes smaller.

Richard Burns said he was the Operations Manager for Champion Retail Eastern Region, Southern Showcase Housing, Homes America. He said the difference in a HUD or manufactured house and a modular house was primarily that it was built to North Carolina State Building Code. The floor joist spacing was different for a mod than it was for a HUD. There was a minimum 50 gallon water heater in a modular home. The structure itself would have a difference in the spacing of the wall studs, floor joists, those types of items that were dictated by the State as opposed to being dictated by HUD. They both came in on trailers and they both went out on trailers. He said he could not look at a house and tell whether it was a HUD or modular house; you had to have the specifications for the house or know what you were looking for. He said anyone could order any house that they sold as a modular home built under North Carolina specs or you could order it to Federal HUD's specs. He said they did have some display homes out so that the customer could see what they were buying.

Attorney Slaughter said that on either structure, when purchased and set up on the customer's property, the wheels come off. Then you would be required to tie it down, give it 220 power, hook up the water and sewer and all the things that were not done to either

on the lot. All of that had to be done to both a manufactured or modular home, once it

was taken to a lot for someone to live in it. That could not be done on a sales lot because once all those things were done, then you wouldn't be allowed to move it after that.

He pointed out on some of the photographs that he had given the Board that homes were mobile or manufactured or HUD homes and which were modular homes. He said what looked to be brick on the homes was merely a vinyl skirting that would peel off. When the skirting was removed, you would indeed find wheels, some of which were slightly off the ground. This had been done for two reasons: 1) to make sure nothing rolled away and 2) because this was a sloped piece of property; to get the unit straight, you had to do something to one side to level it off so that people could look at and have it flat.

He said that the Notice of Violation was actually that structures must meet the dimensional requirements of the zoning district when being constructed or installed on the property. A building permit must be obtained prior to construction or installation of a structure. There was no building permit required to drive these units onto the lot. That was because this was not construction or installation. None of the things happen that happen at a person's lot when they decide to live in one of these units. Donald Moore in Charlotte told him that on a display lot, they did not treat a modular home or a mobile home any differently than they would an RV.

He referred to a document given him by the Planning Department. It was from the Department of Insurance that oversaw some of these units. In the letter dated June 29, it specifically noted that modulars had no plumbing connections, they would never be inhabited where they were located; they were subject to being moved at any time. There was no requirement that they be set on a permanent foundation while on a sales lot.

He referred to the e-mail, which was page 2, from Alan Green to Loray Averett. It said at the end that here the Appendix G had something to do with manufactured homes. He said his clients were not here today for manufactured homes, they were here for modular homes only. This e-mail specifically noted that Appendix G was not enforceable with regard to modular units. "I am not aware of similar documentation at this time for modulars." Even if Appendix G applied them, they would still be fine and that was because the manufacturer for Homes America does not require the permanent tie-down. So Appendix G would not apply to them anyway.

Attorney Slaughter said he thought it was important, in the appeals process, to look at the Statute that said cities could create setbacks in the first place. Section 168-306 specifically said that cities could by ordinance establish minimum distances at buildings and other permanent structures. This was not that; the modular homes were not permanent; the mobile homes were not permanent. They simply did not fall under the category of what a setback applies to because they could be moved in and at any time they could be moved out.

He said he could say he thought that there had been an error of enforcement here and

they would simply ask that the decision be overturned. However, he would like to move on to number 2, which was their variance request.

He said it would be a much simpler solution to look at the property itself. He had attached a small photocopy of a map to the variance request. He also had a much larger map, if it were needed. They contacted a surveyor who told them there had been so many ins and outs to this property and so many pieces of property that it would cost thousands of dollars to do a survey of this property and it would take weeks to do, which would have meant it would not have been ready for today. He assumed, since their request today dealt with the issue of whether the setback applied to a modular home, that that might be possible to do without a survey. If the Board would like a survey, they could certainly get one.

He referred to Lot 18 on the map attached to the application, which was on the corner of Holden Road and McCuiston Road and on the back it was McCuiston Court. Lot 18, which read 1.10 acres on the left hand side, was an irregular and triangular shaped property. They had asked for a very, very specific variance, probably unlike any one that the Board members had seen before. They simply asked for a variance from the requirement that temporary display modular homes meet setbacks required by the Development Ordinance during tenancy of property by Southern Showcase Homes, Inc. d/b/a Homes America. They tried to craft it as precisely as they possibly could and were just asking that while his clients were the tenants there that just as the setback requirements did not apply to mobile homes or modular homes. Once the tenancy was up, then that variance would no longer apply. Again this was the use of the property that had always been done. They were not asking that anything be changed, but asking that his clients be allowed to continue to use the property as they had used it in the past. There was even no change in location of units. They were asking that they be allowed to leave them where they are. In fact, if the variance were not to be given, the mobile homes, apparently, could stay where they were, but the modular homes would all have to move back. The unusual shape of the property would not allow that to be done. The variance would allow his clients to continue what was currently being done on the property, as well as what had been done in the past. If the variance were denied, the temporary modular homes could not be displayed on the property due to its unusual shape.

Attorney Slaughter said it only made sense to him that setbacks that applied to permanent buildings would not apply to something that had been driven up on wheels and just left there with no tie down, no permanent foundation and no one being able to live in it. If a vehicle could be hooked up to the units and the units driven away, that would not be what the setback rules were supposed to address anymore than they would a car or an RV.

He said whether the Board took this as an overturning of the decision of the Enforcement

Office through the appeal or whether the Board did it through giving them the very limited variance, that would justify why they were on the property, he asked that the Board allow his clients to continue what they had been doing on the property for 12 years.

Counsel Carr said there was a point of clarification. The Board did have two issues before it. In either issue, to the extent that any of these structures were on the City right-of-way, they would have to be moved. The Board was not empowered to grant a variance into the City right-of-way. Certainly GDOT and surveyors could deal with that issue after this hearing. But just so the Board was aware, to the extent that the Board members wanted to entertain a variance, it could not be in their current location if those current locations were, in fact, in the right of way. An additional piece of information that might be of interest to the Board was staff did have GDOT look at any potential sight distance problems that would happen should the Board grant a variance. GDOT had no problem with its being a zero lot line.

Attorney Slaughter said if they were in the right-of-way, they should not be. They had never heard that issue raised in any shape or form before today.

In response to a question from Mr. Conrad, Counsel Carr said, not knowing of the right-of-way issue until the actual survey was done, at this point in time it would be a setback issue.

In response to a question from Mr. Tuck, Mr. Ruska said even if he had had the definition of these different type homes prior to the issuing this violation, he would have issued the violation because what staff was trying to determine here was when a thing becomes a structure, as opposed to a vehicle. The ordinance's setback standards were for structures. Their contention was that when the unit was placed on piers, it became more permanent than if it were just on wheels and could readily be moved immediately if somebody requested it for some safety reason or whatever. So what staff was trying to determine here was when do you cross the line from being a vehicle to structure and staff's contention was that when it is on piers like that, that was when it became a structure.

Mr. Burns said the piers were set directly flat on the ground. If the ground were not perfectly level, sitting at an angle, they could have customers walking through a house that was no level. They would pick one end up to bring it to level and block it. The blocking supported the house so that somebody could keep it at a level so it could be viewed by customers. All their frames had what was called a camber in them, which was bent upward, put the weight on it and pulled it level, leaving the house level. The camber supported the frame itself.

Attorney Slaughter said he did not think the structure's definition was sufficient and that

was because the State Ordinance said the setback applied to permanent structures. So he did not believe that putting up one side of a vehicle suddenly made it a permanent structure.

Mr. Ruska asked the applicants if the modular units had to be disassembled to move them.

Attorney Slaughter said there were multiple trailers underneath the modular home, like two trailers side by side. So they were put snug up to each other and were not attached, as they would be on a lot. That was a whole different situation. On the outside, the siding, which was vinyl or aluminum, went on the outside so by looking at it, you cannot tell they were not connected like they needed to be for someone to live in them. So the hookup was different than it was on someone's home where they are permanently connected together. That was not done on the sales lot.

Chair Sparrow said there were some statutes having to do with the motor vehicle laws and some statutes with regulations having to do with financing homes. They usually turn on the term "permanently affixed." That does not mean you cannot jack it up, put the wheels back on and move it. But it becomes real property when it was permanently affixed. He said it was the Chair's opinion that the interpretation was incorrect and that both were not permanent structures and could have a zero side line setback.

Mr. Tuck said he agreed with Chair Sparrow in that he did not have a problem with them being outside the right-of-way, but a zero lot line. However, he was concerned from the building permit aspect and people would be walking on them. If the Building Inspections Department did have some kind of oversight of these units being safe while they were a sales unit, then there was a public safety issue with which he was concerned.

Mr. Burns said they had their own internal controls to ensure all the sales models were safe. The manufacturers have said that they must be blocked to keep them from sagging, if they will be there for more than 30 days. As a standard, they put their blocks on 8 foot on center; they block all doorways with at least one perimeter pier at the doorway to help support the door on the inside, but those were done in the interest of safety. As far as getting the units off the ground, they are setting on a semi-level lot. They merely pick up one end of the house and use whatever it took to bring the house to level.

Mr. Holston referred to Mr. Slaughter's Exhibit 4 and said he saw the manufactured home and then the two modular homes. He asked how long had they been at those locations?

Mr. Burns said he could not answer that since they have 20 sales centers. However, he could say that as a general rule, when they got a house in, they hoped to keep it there six months and then sell it. Anything less than that costs the company money in setups. If a customer comes in at any time from when it hits the lot through leveling it out through the

six months period and wanted to buy that unit, they would sell it right then. He said the

house on the end with the tallest roof, they had just finished setting it up. The one closest to you in the corner itself had been there longer. He did not know the actual dates because he did not visit the sales center on any regular basis.

Mr. Tuck asked Mr. Ruska of all the different mobile HUD sales lots, had the City in the past inspected these required building permits when they set them up on their lots. What was drawing this one into that requirement versus all the other ones, or was it the fact the Inspector thought they were too close to the right-of-way?

Mr. Ruska said, as to the building permit, he could not answer that question. He didn't know whether Mr. Levine could or not. However, staff had also been working with another dealer that was in close proximity in relation to the setback of units. He believed that dealer was complying.

Mr. Levine said that was Palm Harbor Homes. They were just next door. They have a site plan in the works that hadn't been approved. He said they had to have approved site plans before they could place the units.

Mr. Ruska said Mr. Levine was talking about site plan reviews. But as to whether they were getting building permits, he was not sure himself.

Mr. Tuck asked if that were not what was referred to in the violation. It said: "A building permit must be obtained prior to construction or installation of the structure." So what did he mean by that?

Mr. Levine said that was the way he was told the craft the language (not by Mr. Ruska, but another part of the staff). She had the understanding from one of the Building Inspectors that they had an interest in the way these homes were placed.

Mr. Ruska said they were talking about structures that were right on the right-of-way and it would be there for perhaps six months or longer. He said they would have to move two units back that were in the right-of-way.

Chair Sparrow said that by the nature of the inventory, it was not going to turn as quickly as some different kinds of things on display, but it was going to turn. He didn't understand why they were here.

Ms. Lewis said it seemed to her that no matter what you called them, in terms of practical adaptation, they were one and the same thing. She understood the technical difference, but some mobile homes are large enough that they have to be taken apart to be moved down the road. So she couldn't think of any instance, if you're comparing the two, that they would not have more similarities than they would differences. She just did not see the problem.

Mr. Ruska said if the mobile homes were put on piers, under staff's contention they do

become a structure and, therefore, subject to the City's Zoning setbacks.

Chair Sparrow said this was not foundation, it was temporary support that was kickable. He said if the City Council were to say this was the case, that would be fine, but he just didn't buy it.

Mr. Tuck said if these were all what staff considered to be HUD houses instead of HUD and modular out there, would they be here today if they were clearly all the typical 10 by 50 foot long homes?

Mr. Ruska said if they were up on piers, yes.

Chair Sparrow asked how staff defined piers. He said he saw a stack of concrete masonry units.

Mr. Ruska said staff's contention was that when you go to that extent, you were creating a structure that was not readily moveable. If the unit were sitting on wheels, if it were like a tractor-trailer trailer, which would be easily removable, staff would not call that a structure. Staff was trying to define the dividing line here of when some unit becomes a structure and was, therefore, subject to the zoning setback requirements.

Chair Sparrow said the law was that if it were not permanently affixed, it was moveable.

Mr. Tuck asked Mr. Burns if it was on the wheels on level ground, how long would it take them to disassemble a structure versus if that same exact structure, be it modular, mobile, HUD, whatever, was on four piers, three foot high each?

Mr. Burns said on the cinder blocks, they could move it out within hours, the same day. If they get an order to move one and someone has bought it, they would arrange for a scheduling. They would take it off the blocks and move it out. He said they sold everything from the old single wide home up to a manufactured HUD house with four floors. But with all of them, you would stick the tongue back on it, hook to it, pull the blocks out from under it and go. He said there was no time difference in moving a HUD house or a modular house; they go through the same steps. If there were two double wides, one sitting on piers and one was not. Basically the moving contractor was going to just hook it up to his truck, pull the blocks out and drive down the road.
There would be a minimal time difference.

Chair Sparrow said the Board would take the items one at a time. BOA-04-27 was the appeal from an interpretation that structures must meet dimensional requirements of the zoning district when being constructed or installed on the property. So the City was saying that these homes, whether they are HUD homes or modular homes, were being constructed or installed on the property.

Mr. Conrad said that in BOA-04-27, 3600 South Holden Road, he moved that the Zoning

Administrator's interpretation be overruled and this appeal be granted, seconded by Mr. Tuck. The Board voted 5-0 in favor of the motion. (Ayes: Sparrow, Lewis, Conrad, Tuck, Holston. Nays: None.)

VARIANCE

A) BOA-04-28: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA REQUESTS VARIANCES FROM THE REQUIREMENT THAT TEMPORARY DISPLAY MODULAR HOMES MUST MEET SETBACKS REQUIRED BY THE DEVELOPMENT ORDINANCE DURING TENANCY OF THE PROPERTY BY SOUTHERN SHOWCASE HOUSING INC., D/B/A/ HOMES AMERICA. THIS PORTION OF SOUTH HOLDEN ROAD HAS A SPECIAL SETBACK OF 100 FEET MINIMUM FROM THE CENTERLINE. THE APPLICANT HAS LOCATED A MODULAR UNIT WITHIN THIS MINIMUM SETBACK. TABLE 30-4-6-5 & SECTION 30-4-7.3, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (WITHDRAWN)

The appeal was upheld in BOA-04-27; therefore, the request for a variance became moot.

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There being no further business before the Board, the meeting was adjourned at 5:15 p.m.

Respectfully submitted,

Donnie Sparrow, Chair
Greensboro Board of Adjustment

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